

QUICK REFERENCE GUIDE: WHAT TO DO IN A DAWN RAID

Inspectors from the competition authority may search your offices unexpectedly to investigate potentially anti-competitive activities. These are commonly referred to as 'dawn raids'. The authority is legally entitled to do this and obliges all companies to co-operate. This quick reference guide provides some basic steps to follow in a dawn raid and sets out some key "do's" and "don'ts".

ARRIVAL OF THE INSPECTORS

STEP 1

Ask the inspectors to provide their identification and to explain by which authority the search is being executed. In most instances the search is conducted with a warrant - ask to see the warrant and make copies of it. Note the names of each individual present. Each person must be an appointed inspector and produce a certificate of appointment.

STEP 2

Examine the warrant and ensure that it:

- is issued by a judge of the high court, a regional magistrate or magistrate with jurisdiction over the area in which the premises are located;
- clearly identifies the premises which must be entered and searched - ensure that the warrant refers to your premises; and
- has not been issued more than one month prior to the date on which it is executed.

STEP 3

Ensure you understand the extent of the search powers (scope) and the degree of access granted to the inspectors.

STEP 4

Ask the inspectors to wait at reception until you have had an opportunity to phone your in-house legal advisor/s and /or external attorney/s. Ideally, the search should only start once your legal representative is present, but the inspectors are not obligated to wait for legal representatives to arrive.

STEP 5

Take the inspectors to a meeting room to use as their base and request that they wait there until your legal representative has arrived. Be calm at all times and do not resist any actions by the use of force. Make it clear that the company intends to comply with the lawful conduct of the search.

DURING THE DAWN RAID

- Shadow the inspectors, closely allocating at least one employee to each inspector. The shadows must take notes of all of the inspector's activities, carefully noting all their requests and everything that they do. Shadows should be co-operative and explain where things are and how documents are filed (to the extent that they can). An information technology (IT) specialist from the company should be allocated to the IT inspector representative.
- Shadows must ensure that they have a duplicate copy of all documents copied by the inspectors.
- Shadows must not allow the inspectors to review privileged documents - "privileged information" refers to any document which has been prepared for purposes of contemplated litigation or any legal advice. Privileged information need not be marked "privileged".
- Do not answer any material questions in relation to the dawn raid or any documents reviewed by the inspectors until your legal representative has arrived.
- Do not obstruct the officials in exercising their power and do not destroy, falsify or conceal documents.

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